

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-94 (13)S  
Sales Tax  
March 30, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S931222A

On December 22, 1993, a Petition for Advisory Opinion was received from Cobleskill Golf and Country Club, Inc., P.O. Box 367, Cobleskill, NY 12043-0367.

The issue raised by Petitioner, Cobleskill Golf and Country Club, Inc., is whether dues paid by members are subject to sales and use taxes.

Petitioner is the owner/operator of a golf course and country club which provides its members with the use of a golf course, clubhouse and a restaurant and bar. All members are eligible to use the golf course and to participate in all golf tournaments and other social functions such as dinners and dances. Membership is not restricted and is available to the general public on a first come first serve basis.

Petitioner is owned by 197 stockholders, of which only 81 are members of Petitioner. An individual does not have to be a stockholder in order to be a member. The By-laws of Petitioner delegates all management decisions of Petitioner to a Board of Directors. The Board of Directors is elected by the stockholders; and only stockholders can be Directors. All standing committees established by the Board are comprised entirely of stockholders. All tournaments and social functions are controlled by the Directors.

Members do not have any ownership interest in any of the assets of Petitioner and they do not participate in the selection of the Directors.

The use of the word "club" in Petitioner's name is to help market its golf course.

Section 1105(f)(2) of the Tax Law imposes sales tax upon the following:

(2) The dues paid to any social or athletic club in this state if the dues of an active annual member, exclusive of the initiation fee, are in excess of ten dollars per year, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars...

Section 527.11(b)(5) of the Sales and Use Tax Regulations provides, in part, as follows:

(5) Club or organization. (i) The phrase "club or organization" means any entity which is imposed of persons associated for a common objective or common activities. Whether the organization is a membership corporation or association or business corporation or other legal type of organization is not relevant. Significant factors, any one of which may indicate that an entity is a club or organization are: an

organizational structure under which the membership control social or athletic activities, tournaments, dances, elections, committees, participation in the selection of members and management of the club or organization, or possession by the members of a proprietary interest in the organization. The organizational structure may be formal or informal.

(ii) A "club or organization" does not exist merely because a business entity:

(a) charges for the use of facilities on an annual or seasonal basis even if an annual or season pass is the only method of sale and provided such passes are sold on a first-come, first-served basis.

(b) restricts the size of the membership solely because of the physical size of the facility. Any other type of restriction may be viewed as an attempt at exclusivity.

(c) uses the word "club" or "member" as a marketing device.

(d) offers tournaments, leagues and social activities which are controlled solely by the management.

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Example 18: A club owned by an individual which attempts to restrict its membership by geographic area, income, race, religion, or any other means, is a "club or organization". However, a club owned by an individual which restricts its membership only because of the physical capacity of its facilities is not a "club or organization". (emphasis added)

In Brierwood Village, Inc., Adv Op Comm T&F, February 13, 1989, TSB-A-89(6)S the Commissioner held that inasmuch as (1) the membership of Petitioner's club possessed no proprietary rights in Petitioner and had no control over its activities or management and (2) membership in Petitioner was not exclusive, with members being appointed and accepted from a waiting list maintained by Petitioner, Petitioner was not a "social or athletic club" within the meaning of Section 1105(f)(2) of the Tax Law and, therefore, its annual membership "fees" or "dues" was not subject to sales and use taxes.

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Accordingly, in the instant case since members in Petitioner possess no proprietary rights in Petitioner and have no control over its activities or management, membership in Petitioner is not restricted, and the word "club" as used in Petitioner's name is used as a marketing device pursuant to Section 527.11(b)(5) of the Sales and Use Tax Regulations and Brierwood Village, Inc., supra, Petitioner is not a "social or athletic club" within the meaning of Section 1105(f)(2) of the Tax Law. Therefore, dues paid by its members for membership in Petitioner are not subject to sales and use taxes.

DATED: March 30, 1994

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions  
are limited to the facts set forth therein.